first branch; but he was also an elector, and so he is within the operation of the second branch, as to the loss of his right to vote.

The case finds there was no hiring of McKay to carry Paul, the voter. McKay carried Paul at Price's request, but he carried him "voluntarily and free of charge." Some days after the election, Price, as compensation to McKay, gave him $2 for carrying the voter. McKay did not receive it as compensation, but in payment of work he had done for Price in his ordinary business as a carter.

I do not see how McKay can be within the operation of the section at all. The hiring, or promising to pay, or paying for any horse, &c., applies to the candidate, and to any person on his behalf. That will extend to Price if he hired, or promised to pay, or paid McKay for any horse, &c.; but it cannot extend to McKay, as he was at most the person hired, promised to be paid, or paid. Nor does the second branch apply to him, for that extends to the electors who hire others, and not to those who are hired.

The case has to be considered, then, with regard to Price alone.

At the time he voted—for I assume he did vote, as I gather so from the first question put in the case, and from the argument of counsel, though the case itself does not say he did,—he was under no disqualification; for he had not hired, promised to pay, or paid McKay, and there was no agreement or understanding to do so, but the contrary; the service was to be, as in fact it was at the time performed by McKay, free of charge.

In my opinion, the agency of Price terminated with the election,—the occasion and the purpose for which he was employed. His subsequent payment was an unauthorized act as to his principal. It can relate back to nothing, for there was no hiring or promise to which it could attach. But as a fact it was not a payment; that must be the act and by the assent of both parties. When Price gave the money for one purpose, and McKay received it on another account, and in respect of a different transaction, that was not a payment for the purpose that Price intended it for, more than it was a payment on the account for which McKay received it. It was properly not a payment to or for either one purpose or the other: *Thomas* v. *Cross*, 7 Ex. 728.

In no view of the case, as the learned Chief Justice has found that the respondent knew nothing of the matter between Price and McKay, and never authorized or sanctioned it, could it be possible to avoid the election, even if Price's act had been determined to be a corrupt practice. For under the 46th section of the 34 Vict., ch. 3, the learned Chief Justice, to affect the return, would have to find that "the corrupt practice had been committed by or with the knowledge and consent of the candidate," whereas he has distinctly negatived that fact.

I am not quite satisfied, as I stated during the argument, however convenient the practice may be, and however desirable it is that the law should be so, that the rota Judge has power, until he is in a position to grant his certificate, under the 34 Vict., ch. 3, sec. 20—that is, until the close of the case—to reserve a question for the Court.

Such question is to be reserved "in like manner as questions are usually reserved by a Judge on a trial at Nisi Prius," and no Judge at Nisi Prius can stop a case in the middle, and adjourn it until he has some intermediate difficulty cleared out of his way by a reference to the Court. If there be any doubt in this respect, the Act should be amended.

Assuming that the case is regularly before us, I shall answer the questions submitted as follows:—

1. That there was no *payment* made by Price to McKay. If it were a payment, it was made by Price at a time when he was not an agent for the respondent, and with respect to a matter to which it could have no proper relation, for there was no antecedent hiring or promise to pay. The matter was, therefore, not a corrupt practice.

If it had been a corrupt practice, it would have avoided Price's vote, but not McKay's vote, for he was the person hired, if there had been a hiring, and such a person is not deprived of his vote.

This act. if it had been established to have been a corrupt practice, would not have defeated the election, because it has not been found to have been "committed by or with the knowledge and consent of the candidate;" on the contrary, the very opposite fact has been found for the candidate.

2. That the giving of liquor, as found by the case, by Houston, does not avoid his vote. I have more doubt as to the selling of liquor by Burns, but I am not so free from doubt as to find against him, on the case submitted.

I am of opinion, therefore, that neither of their votes has been avoided.

Morrison, J., concurred.

Draper, C. J. of Appeal, was not present during the argument, and took no part in the judgment.

In re Election for the Electoral Division of the County of Monck

32 Vict., ch. 21, ss. 57—List of Voters not delivered in time—Wrong list used—Amendment of petition.

[32 U. C. Q. B., 147.]

The 32 Vict., ch. 21, sec. 7, and sub-sec. 1, enacts that the clerk of each municipality shall, in each year, make from the assessment rolls a list of the persons entitled to vote therein, and deliver it to the Clerk of the Peace on or before the 15th August. By sub-sec. 3, this period shall be directory only to the clerk, "and the said lists shall be valid and effectual for the purposes of this Act, even though not so completed and delivered by the said period of time;" and by sub-sec. 10, no person shall be admitted to vote unless his name appears on the last list of voters, delivered to the Clerk of the Peace "*at least one month before the date of the writ to hold such election.*"

The writ to hold the election was tested on the 25th February, 1871. The list of voters for one of the townships in the Electoral Division was made up from the assessment roll of 1870, and sworn to on the 13th August; but it was not